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BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

The Commission, in establishing appropriate bargaining
units, considers the "power of appeal" to be the determining
factor for inclusion. 8/ In that the

In the Matter of the Petition of

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN
& HELPERS UNION 446, affiliated with
I.B.T.W. & HELPERS OF AMERICA

For A Referendum on the Question
of an All-Union Agreement between

HAMMERBLOW COMPANY, DIVISION OF NEWAY,
DIVISION OF LEAR-SIEGLER, INC.,
Wausau, Wisconsin, Employer

Case I
No. 16412 R-5435
Decision No. 11588

and CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN
& HELPERS UNION 446, affiliated with
I.B.T.W. & HELPERS OF AMERICA, Union.

Appearances:

Mr. Gerald Allain, Business Representative, for the Petitioner.
Mr. Richard Tinkham, Attorney at Law, for the Employer.

DIRECTION OF REFERENDUM

Petition having been filed with the Wisconsin Employment
Relations Commission by Chauffeurs, Teamsters, Warehousemen & Helpers
Union 446, affiliated with I.B.T.W. & Helpers of America, requesting
that a referendum be conducted, pursuant to the provisions of Section
111.06, Wisconsin Statutes, among certain employees of the above named
Employer, for the purpose of determining whether the required number
of such employees favor an all-union agreement between said Employer
and the Petitioner; and a hearing on such petition having been held
on January 30, 1973 and the Commission having considered the evidence;

NOW, THEREFORE, it is

DIRECTED

That a referendum by secret ballot be conducted under the
direction of the Wisconsin Employment Relations Commission within
thirty (30) days from the date of this Directive in the collective
bargaining unit of all production and maintenance employees, shipping
and receiving employees and truck drivers in the employ of Hammerblow
Company, Division of Neway, Division of Lear-Siegler, Inc., but
excluding office clerical employees, managerial employees, professional
employees, guards and supervisors as defined in the National Labor
Relations Act, who were employed by the Employer on February 1, 1973,
except such employees as may prior to the referendum quit their employ-
ment or be discharged for cause, for the purpose of determining whether
the required number of such employees favor an all-union agreement between

the Employer and Chauffeurs, Teamsters, Warehousemen & Helpers Union
446, affiliated with I.B.T.W. & Helpers of America.

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Given under our hands and seal at the
City of Madison, Wisconsin, this 5th
day of February, 1973.

In the Matter of the Petition of

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

QUALIFIED EMPLOYERS AND EMPLOYEES
OF THE STATE OF WISCONSIN
IN THE MATTER OF THE PETITION OF

By

Morris Slavney
Morris Slavney, Chairman

FOR A DECISION ON THE PETITION OF
THE QUALIFIED EMPLOYERS AND EMPLOYEES

REPRESENTED BY THE QUALIFIED EMPLOYERS
OF THE STATE OF WISCONSIN
IN THE MATTER OF THE PETITION OF

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner

W. 11542 R-5435
Petition No. 11588

and QUALIFIED EMPLOYERS AND EMPLOYEES
OF THE STATE OF WISCONSIN
IN THE MATTER OF THE PETITION OF

Appendix

For the purpose of the hearing, the following evidence was submitted:
The Employer's Exhibit and the Employee's Exhibit.

EXHIBIT A

Exhibit A, which consists of the Wisconsin Employment
Relations Commission's order, dated February 1, 1973, regarding
Union 446, affiliated with I.B.T.W. & Helpers of America, requesting
that a representative of the union be appointed to the position of Section
111.08, Wisconsin Statute, for the purpose of representing the above named
Employee. The order provides for the union to select the required number
of such employees, and for the union to select the required number of
and the Petitioner's Exhibit, which consists of the evidence submitted
on January 11, 1973, and the Employer's Exhibit, which consists of the evidence

For the purpose of the hearing

Exhibit B

That the hearing was conducted under the
direction of the Wisconsin Employment Relations Commission within
thirty (30) days from the date of the Petition to the collective
bargaining unit for all employees of the Employer, shipping
and receiving employees, and for the purpose of the Employer of Hammerlow
Company, and for the purpose of the Employer of Hammerlow, Inc., but
excluding all other employees of the Employer, professional
employees, and for the purpose of the Employer of the National Labor
Relations Board, and for the purpose of the Employer of the National Labor
except those employees who are not represented by their employ-
ment or who are not represented by their purpose of determining whether
the Employer is in violation of the National Labor Relations Act or an agreement between

HAMMERBLOW COMPANY, DIV. OF NEWAY, DIV. OF LEAR-SIELGER, INC.
the I, Decision No. 11588, Teamsters, Warehousemen & Helpers Union
446, affiliated with I.B.T.W. & Helpers of America.

MEMORANDUM ACCOMPANYING

DIRECTION OF ELECTION hands and seal at the
City of Madison, Wisconsin, this 5th

Prior to the filing of the instant petition¹ the National
Labor Relations Board, following an election conducted by it on
December 15, 1972, certified Chauffeurs, Teamsters, Warehousemen & SS
Helpers Union 446, affiliated with I.B.T.W. & Helpers of America as
the exclusive representative of the employees in the unit involved
herein.

During the hearing herein a dispute arose as to the eligibility
date to be utilized in the conduct of the referendum. The Union
proposed January 10, 1973, the date of the execution of the petition,
and the Employer held for January 30, 1973, the date of the hearing.

The significance of this disagreement lies in the fact that
seven new employees were hired by the Employer between said two dates
and such action constituted approximately a ten percent increase in
the work force.

Position of the Union

The Union does not accuse the Employer of a deliberate intent to
dilute the support for an all-union agreement vote by the employees
in the bargaining unit but does contend that the addition of seven
new employees since January 10, 1973 (the petition was received by the
Commission on January 11, 1973) introduce an additional element of
uncertainty that did not exist at the time the petition was filed.

Position of the Employer

The Employer contends that all employees in the bargaining unit,
including the seven new hires, should have the right to vote on an
issue of basic importance to each employee individually. The Employer
hired the new employees as part of a planned permanent expansion and
argues that the new employees would have a choice through their vote
as to what their future conditions of employment should be in respect
to an all-union agreement.

Discussion

The general policy of the Commission establishes the eligibility
date for a referendum to be that of the date on which the Commission
issues the Direction of Referendum. 1/ Further the Commission has held
that where there was an anticipated increase of a substantial number
of employees in the bargaining unit, the Commission established the
eligibility date which would result in the newly hired employees being
eligible to participate in the referendum. 2/ Since the employees who
were hired after the certification issued by the National Labor Relations
Board are included in the unit, despite the fact that they were not
employees at the time of the National Labor Relations Board election,
and, if a collective bargaining agreement is executed, said new employees
will be covered by the conditions of employment established in said
collective bargaining agreement. One of the conditions of employment,

1/ Chicago Pickle Co., Inc. (5466) 4/60.

2/ Marquette University (7266) 9/65.

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION
HAMMERBLOW COMPANY, DIV. OF NEWAY, DIV. OF LEAR-STEEL CORP., INC.
should the required number of employees favor an all-union agreement,
may very well require all employees in the unit to become members
of the Union or to pay the equivalent of dues to the Union. Said
new employees therefore have a right to participate in the referendum,
in accordance with the established policy of the Commission.

Prior to the filing of the instant petition, the National
Labor Relations Board, in its decision of December 13, 1972,
December 13, 1972, identified the difference between Warehousemen &
Helpers Union 446, affiliated with the International Brotherhood of
the exclusive representatives of the employees in the unit involved
herein.

By Morris Slavney
Morris Slavney, Chairman

During the hearing held on January 11, 1973, the eligibility
date to be utilized in the conduct of the referendum. The Union
proposed January 11, 1973, the date of the receipt of the petition,
and the Employer held to January 11, 1973, the date of the hearing.
Jos. B. Kerkman, Commissioner

The significance of this disagreement lies in the fact that
seven new employees were hired by the Employer between said two dates
and such action constituted approximately a ten percent increase in
the work force.

Position of the Union

The Union does not charge the Employer of a deliberate intent to
obtain the support for an all-union agreement voted by the employees
in the referendum. It does contend that the addition of seven
new employees since January 11, 1973, the petition was received by the
Commissioner on January 11, 1973, introduced an additional element of
uncertainty into the conduct of the referendum which was filed.

Position of the Employer

The Employer contends that all employees in the bargaining unit,
including the seven new hires, should have the right to vote on an
issue of basic importance to all employees. The Employer
noted the new employees are part of a planned program of expansion and
argues that the employees will be able to express their views
as to what form of representation should be in respect
to an all-union agreement.

Conclusion

The general policy of the Commission is that the eligibility
date for a referendum shall be the date on which the Commission
issues the direction of election. The Commission has held
that where there was an increase or decrease of a substantial number
of employees in the bargaining unit, the Commission established the
eligibility date which was closest to the date of the hearing. The newly hired employees being
eligible to participate in the referendum. Since the employees who
were hired after the date of the hearing by the National Labor Relations
Board are included in the unit, despite the fact that they were not
employees at the time of the National Labor Relations Board election,
and, if a collective bargaining agreement is executed, said new employees
will be covered by the provisions of the contract established in said
collective bargaining agreement. Therefore, the Commission of employment,

1/ Chicago & North Western Railway, 1972, 1973, 1974

2/ Marquette University, 1972, 1973, 1974